

IN THE ¹⁷
United States Circuit Court of Appeals
For the Ninth Circuit

MATIAS IDOATA,

Plaintiff in Error,

vs.

UNITED STATE OF AMERICA,

Defendant in Error.

Transcript of the Record

*Upon Writ of Error from the United States District
Court for the District of Idaho,
Southern Division.*

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*Upon Writ of Error from the United States District
Court for the District of Idaho,
Southern Division.*

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

ROBERT HIBBARD,
Boise, Idaho,
Attorney for Plaintiff in Error.

E. G. DAVIS,
United States Attorney,

JOHN H. McEVERS,
Assistant United States Attorney,

McKEEN F. MORROW,
Assistant United States Attorney,
Attorneys for Defendant in Error. . .

INDEX

	Page
Assignment of Error.....	35
Bill of Exceptions No. 1.....	14
Bill of Exceptions No. 2.....	20
Citation	42
Clerk's Certificate	44
Information	7
Judgment	13
Minute Entry	11
Names and addresses of attorneys of Record....	4
Order Granting Writ of Error.....	38
Petition for Writ of Error.....	34
Praecipe and Stipulation.....	39
Verdict	12
Writ of Error.....	41

Witnesses on Part of Defendant.

IDOATA, MATIAS—	
Direct	30
Cross	31

	Page
OSLER, O. V.—	
Direct	33
Cross	33
URRUTIA, MARIA—	
Direct	29
Cross	29
WINTER, HARRY—	
Direct	32
Cross	32

Witnesses on Part of Plaintiff.

KUCKENBECKER, O. E.—	
Direct	25
Cross	27
REDMAN, R. F.—	
Direct	21
Cross	24
REYNOLDS, PAUL—	
Direct	27
Cross	28
STEUNENBERG, C. B.—	
Direct	28

*In the District Court of the United States, in and
for the District of Idaho, Southern Division.*

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MATIAS IDOATA, MARIA URRUTIA,
Defendants.

No. 971.

INFORMATION.

E. G. Davis, United States Attorney for the District of Idaho, who for the United States in this behalf prosecutes in his own proper person comes into Court on this 10th day of April, 1923, and with leave of the Court first had and obtained upon his official oath gives the Court here to understand and be informed as follows:

COUNT ONE

(Possession)

That Matias Idoata and Maria Urrutia, late of the County of Cassia, State of Idaho, heretofore, to-wit, on or about the 17th day of March, 1923, at Burley, Idaho, in the said County of Cassia, in the Southern Division of the District of Idaho and within the jurisdiction of this Court, did then and there wilfully, knowingly and unlawfully have in their possession certain intoxicating liquor containing more than one-half of one per cent of alcohol,

to-wit, certain spirituous liquors commonly known as "moonshine whiskey", the exact amount of which is to this informant unknown, the same being designed, intended and fit for use as a beverage, the possession of same being then and there prohibited and unlawful and contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT TWO

(Sale)

That Matias Idoata and Maria Urrutia, late of the County of Cassia, State of Idaho, heretofore, to-wit, on or about the 17th day of March, 1923, at Burley, Idaho, in the said County of Cassia in the Southern Division of the District of Idaho, and within the jurisdiction of this Court, did then and there wilfully, knowingly and unlawfully sell a quantity of intoxicating liquor containing more than one-half of one per cent of alcohol, to-wit, four drinks of a certain spirituous liquor commonly known as "moonshine whiskey", the same being designed, intended and fit for use as a beverage, the sale of same being then and there prohibited and unlawful and contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT THREE

(Possession)

That Matias Idoata and Maria Urrutia, late of the County of Cassia, State of Idaho, heretofore, to-wit, on or about the 20th day of March, 1923, at Burley, Idaho, in the said County of Cassia, in the Southern Division of the District of Idaho and within the jurisdiction of this Court, did then and there wilfully, knowingly and unlawfully have in their possession certain intoxicating liquor containing more than one-half of one per cent of alcohol, to-wit, about a quart of a certain spirituous liquor commonly known as "moonshine whiskey", the same being designed, intended and fit for use as a beverage, the possession of same being then and there prohibited and unlawful and contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT FOUR

(Nuisance)

That Matias Idoata and Maria Urrutia, late of the County of Cassia, State of Idaho, heretofore, to-wit, on or about the 20th day of March, 1923, at Burley, Idaho, in the said County of Cassia, in the Southern Division of the District of Idaho and within the jurisdiction of this Court, did then and there wilfully, knowingly and unlawfully maintain, keep and operate that certain place known as the Casa

Espanola and located at 614 North Overland Street, Burley, Cassia County, Idaho, as a public and a common nuisance, to-wit, as a place where intoxicating liquors containing more than one-half of one per cent of alcohol, to-wit, certain spirituous liquors commonly known as "moonshine whiskey", the same being designed, intended and fit for use as a beverage, were sold, kept and bartered, said acts and things herein charged being then and there prohibited and unlawful, and contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

E. G. DAVIS,

*United States Attorney for the
District of Idaho.*

United States of America,)
District of Idaho,) ss.
Southern Division,)

John H. McEvers, being first duly sworn on his oath, deposes and says: That he is a duly appointed, qualified and acting Assistant United States Attorney for the District of Idaho, and that he makes this verification as such, that he has read the above and foregoing information, knows the contents thereof, and that the facts and things here-

in stated are true as he verily believes.

JOHN H. McEVERS,

Subscribed and sworn to before me this 9th day
of April, 1923.

W. D. McREYNOLDS,

Clerk of the United States Dist. Court.

By Pearl E. Zanger,

(SEAL)

Deputy.

Leave is hereby granted to file the foregoing in-
formation.

FRANK S. DIETRICH,

District Judge.

Endorsed, Filed April 10, 1923.

W. D. McREYNOLDS, Clerk.

MINUTE ENTRY.

At a stated term of the District Court of the
United States for the District of Idaho, held at
Boise, Idaho, on Saturday the 14th day of April,
1923, the following proceedings, among others, were
had, to-wit:

Present, Hon. Frank S. Dietrich, Judge.

United States of America,)	
vs.)	Criminal
Matias Idoata and Maria Urrutia,)	No. 971.
Defendants.)	

Comes now John H. McEvers, Assistant Dis-

strict Attorney, with the defendants into Court, the defendants to be arraigned upon the information. When asked by the Court if they were informed against by their true names, the defendant Mats Idoata stated that his true name was Matias Idoata. The reading of the information was waived by the defendants who were informed of the contents thereof by the Court. When asked by the Court whether their pleas were guilty or not guilty of the offenses charged in the information, Matias Idoata plead guilty on the first and third counts, and not guilty on the second and fourth counts. The defendant Maria Urrutia entered a plea of not guilty to all of the counts.

(Title of Court and Cause.)

No. 971.

VERDICT.

We, the jury in the above entitled cause, find the defendant, Matias Idoata, guilty on the second count, and guilty on the fourth count, and we find the defendant, Maria Urrutia, not guilty on the first count, not guilty on the second count, not guilty on the third count, and not guilty on the fourth count, as charged in the information.

V. T. CRAIG,

Foreman.

Endorsed, Filed April 25, 1923,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

No. 971.

JUDGMENT.

Convicted of
VIOLATION NATIONAL PROHIBITION ACT.

Now, on this 2nd day of May, 1923, the United States District Attorney, with the defendant, Matias Idoata and his counsel, Robert Hibbard, Esq., came into Court; the defendant was duly informed by the Court of the nature of the information filed against him for the crime of Violation National Prohibition Act committed on the 17th day of March, A. D. 1923; of his arraignment and plea of not guilty as charged in the second and fourth counts in the information, of his trial and the verdict of the jury on the 25th day of April, A. D., 1923. "Guilty as charged in the second and fourth counts in the information." The defendant was then asked by the Court if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the Court.

Now, therefore, the said defendant having been convicted of the crime of Violation National Prohibition Act,

It is hereby considered and adjudged that the said defendant Matias Idoata do pay a fine of \$200.00 and \$200.00 and that he be imprisoned and

kept in the County Jail of Twin Falls County, Idaho, for the term of Two (2) Months, a stay of execution of this judgment was granted to May 9th, 1923.

(Title of Court and Cause.)

No. 971.

BILL OF EXCEPTIONS.

No. 1.

BE IT REMEMBERED, that on the 24th day of April, 1923, before the trial of the above entitled cause, the defendant, Matias Idoata, filed with the Clerk of the above entitled Court a Petition for and order restraining the use of property as evidence in the above entitled cause; that the following is a copy of said petition and the exhibits annexed thereto:

(Title of Court and Cause.)

(Petition for and Order Restraining Use of
Property as Evidence.)

"Comes now the defendant, Matias Idoata, and states that at all times hereinafter mentioned he resided with his family in a dwelling located on Lot 20, Block 88, No. 614 North Overland Street, Burley, Cassia County, Idaho.

That on the 20th day of March, 1923, certain government and state officers, none of whom are known to this petitioner, without authority, except as hereinafter alleged, searched said dwelling and

home and seized the following described property, to-wit: four small glasses and a bottle containing about a pint of moonshine whiskey, contrary to and in violation of Section 17, Article I, of the Constitution of the State of Idaho, and of the fourth and fifth amendments to the Constitution of the United States of America.

That said officers or any of them had any warrant or authority to make said search except from a pretended search warrant issued by one John Jackson, United States Commissioner, of Boise, Idaho, a copy of which search warrant is marked Exhibit A, attached hereto and made a part hereof; said warrant was based upon and issued on the authority of a pretended and insufficient affidavit of one Paul Reynolds, a copy of which is attached hereto and made a part hereof and marked Exhibit B; that said affidavit was insufficient and afforded no basis for the issuance of a search warrant for the following reasons:

First: It did not set out facts from or upon which the affiant based his belief and information as required by law.

Second: It did not describe the property to be seized as required by the Fourth Amendment to the Constitution of the United States of America.

That the District Attorney, Marshal and Clerk of the above entitled Court took the above mentioned property into their possession and have failed and refused to return the same or any part thereof to your petitioner, although demand has been made on each of them to so do. That the said property is being wrongfully held and detained by them in violation to this petitioner's rights under the Constitution of the United States and of the State of Idaho.

Tha said District Attorney purposes to use said property as evidence at the trial of the above entitled cause, as evidence against this defendant and

that by reason thereof and of the facts set forth the defendant's rights will be violated under the Constitution of the United States and of the State of Idaho, unless the Court orders the return of said property or restricts or prevents the use of any property seized or any information obtained, on or by the authority of the search warrant herein mentioned and described, from being used against the defendant as evidence.

WHEREFORE, Petitioner prays that the Court direct an order to the District Attorney, Marshal and said Clerk, restraining the use of any property obtained as a result of the aforementioned illegal search warrant, in the above entitled cause.

Signed MATIAS IDOATA."

[illegible]

Matias Idoata, being first duly sworn, deposes and says: That he is the petitioner above named, that he has had said petition read to him, knows the contents thereof and that he believes the facts contained therein are true.

Signed MATIAS IDOATA."

Subscribed and sworn to before me this 25th day
of April, 1923.

Signed

B. W. OPPENHEIM,
Notary Public for Idaho.
Residence: Boise, Idaho.

EXHIBIT A.—SEARCH WARRANT.

UNITED STATE OF AMERICA,)
District of Idaho,) ss.
Southern Division,)

To Elias Marsters, Federal Prohibition Director,
for the District of Idaho, and to his agents, or
and or either of them,—GREETING:

WHEREAS, complaint on oath and in writing,

supported by affidavits, has this day been made before me, John Jackson, a United States Commissioner for said district, by Paul E. Reynolds, alleging that he has reason to believe, and does believe, that within a certain house, store, or building in this district, to-wit: that certain building located on Lot 20, Block 88, being No. 614 North Overland Street, Burley, Cassia County, Idaho, being occupied by John Doe (Mexican) known as the Casa Espanola, there is located certain property, to-wit, whiskey, beer and other intoxicating liquors which is being used as a means of committing a misdemeanor, to-wit, a violation of the National Prohibition Act of the statutes of the United States of America;

And whereas, the particular grounds or probable cause for the issuance of this warrant and the names of the persons whose affidavits have been taken in support hereof are as follows:

That the said Paul E. Reynolds has been informed by a reliable party whose name affiant does not care to disclose, that the said party has seen intoxicating liquors possessed and sold by the said Mexican at the Casa Espanola on the premises described above.

And whereas the undersigned is satisfied of the existence of the grounds of the said application, and that there is probable cause to believe their existence.

You are Therefore Hereby Commanded, in the name of the President of the United States, to enter said premises in the day time only, with the necessary and proper assistance, and forthwith search the same—except the rooms occupied by permanent lodgers or roomers in said rooming house, solely as a private dwelling for the property herein specified, and bring the same if found, before the undersigned or any other Commissioner having juris-

diction of said matter, and report the act concerning the same as required by law.

Witness my hand and seal this 19th day of March, 1923.

Signed
(SEAL)

JOHN JACKSON,
United States Commissioner.

On the back of above Exhibit was the following:

RETURN OF SEARCH WARRANT.

Returned this 21st day of March, 1923. Served, by making search as within directed upon which search, I found, seized, and took possession of the following property and articles: One bottle moonshine whiskey, four whiskey glasses, and duly inventoried the same as above, according to law, leaving with defendant at said place a receipt therefor.

Signed PAUL E. REYNOLDS,

I, Paul E. Reynolds, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of the property taken by me on this warrant.

Signed PAUL E. REYNOLDS.

Sworn to and subscribed before me, this 21st day of March, 1923.

Signed

JOHN JACKSON,
*United States Commissioner.
District of Idaho, Southern
Division.*

EXHIBIT B.—AFFIDAVIT FOR SEARCH WARRANT.

UNITED STATES OF AMERICA,) ss.
District of Idaho,)
Southern Division.)

On this 19th day of March, 1923, before me, John Jackson, a United States Commissioner for

the District of Idaho, Southern Division, personally appeared Paul E. Reynolds, who, being by me first duly sworn, did depose and say: That he has reason to believe, and does believe, that within a certain house, store, building, or other place, in this District of Idaho, to-wit: that certain dwelling located on Lot 20, Block 88, No. 614, North Overland Street, Burley, Cassia County, Idaho, occupied by John Doe (Mexican) known as the Casa Espanola, there is located certain property, to-wit: whiskey, beer and other intoxicating liquors, which is being used as the means of committing a misdemeanor, to-wit, a violation of the National Prohibition Act of the Statutes of the United States; that the facts ending to establish the grounds of this application, and the probable cause of deponent believing that such facts exist are as follows: That the said Paul E. Reynolds has been informed by a reliable party whose name he does not care to disclose, that the said party has seen intoxicating liquors possessed and sold by the said Mexican at the Casa Espanola on premises described above.

Signed PAUL E. REYNOLDS.

Sworn to before me this 19th day of March, 1923.

Signed JOHN JACKSON,
(Seal) *U. S. Commissioner as aforesaid.*

BE IT ALSO REMEMBERED, that the 25th day of April, at 9:30 A. M., was the date and hour set by the Court to hear said motion and petition. That Robert Hibbard appeared as counsel for petitioner and J. H. McEvers appeared on behalf of plaintiff. That said motion was thereupon duly submitted to the above entitled Court and after hearing counsel the said Court overruled defendant's petition and motion and allowed the defendant an exception to said ruling.

Wherefore, the defendant Matias Idoata, presents the foregoing as his Bill of Exceptions No. I,

and prays that the same be settled and allowed and signed and sealed by the Court, together with his Bill of Exceptions No. 2.

ROBT. HIBBARD,
Attorney for Defendant.

The foregoing is duly allowed and settled as the defendant's Bill of Exceptions No. I.

Dated at Boise, Idaho, this 12th day of May, 1923.

FRANK S. DIETRICH,
Judge.

Service of the foregoing Bill of Exceptions admitted and acknowledged by receipt of a copy thereof this 18th day of May, 1923.

McKEEN F. MORROW,
Assistant U. S. District Atty.

(Title of Court and Cause.)

No. 971.

Criminal.

BILL OF EXCEPTIONS.

No. 2.

BE IT REMEMBERED, that on the trial of this cause, in the above entitled Court, at the April term, 1923, of said Court, the Honorable F. S. Dietrich, presiding, when the following proceedings were had, to-wit:

The jury was impannelled and sworn according to law and thereupon the following proceedings were had:

John H. McEvers, Assistant United States District Attorney, read the information to the jury and in-

formed the jury that the defendant, Maria Urrutia had plead not guilty to the four counts contained therein and that the defendant, Matias Idoata, had plead guilty to the two counts of possession and not guilty to each of the two counts charging sale and nuisance.

Thereupon the plaintiff to sustain issue upon its part called R. F. Redman, who testified as follows:

Witness resides at Twin Falls, Idaho. Occupation is that of a private detective. Was employed by part of the people of Burley, Idaho, on March 17th, 1923. Saw the defendant on the 17th day of March, 1923, in the Casa Espanola, at Burley. Went there to buy a drink and walked through dining room into kitchen seeing the defendant Matias Idoata in the dining room with another man. The party with witness asked Matias Idoata if there was any chance to get a drink and defendant told him to go in the kitchen. They went into the kitchen and Earl Padgett, his companion, asked for drinks and the defendant Maria Urrita got a bottle from the left hand flour bin of the kitchen cabinet and served the drinks in whiskey glasses. He gave Earl Padget one dollar and said party paid for the drinks, which were commonly known as moonshine whiskey. Went back there on March 20th, 1923, with Mr. Reynolds and Mr. Kuchenbecker with a search warrant and searched the

same flour bin in which he previously saw the liquor.

By MR. McEVERS:

Q. Now I will ask you whether or not you searched the same barrel or flour bin in which you saw the liquor before when you were there?

A. I did.

Q. What did you find when you were there then?

A. I found a bottle.

Q. Handing you for identification Government's Exhibit I, I will ask you whether or not you saw that before?

A. I did.

Q. Where did you get it?

A. Out of the flour bin.

Q. That was the time when you searched the—

MR. HIBBARD: For the purpose of keeping my record clear, I object to the testimony of this witness with reference to this bottle, Plaintiff's I, and object to it, if the Assistant District Attorney wishes to offer it in evidence, on the ground of it being incompetent, irrelevant, and immaterial, and for the further reason that it was obtained under an illegal search warrant and should not be used against the defendant Matias Idoata and request that the last answer be stricken and that said exhibit be removed from the court room. I also object upon the same grounds to any evidence that

this witness may testify to obtained at the time of this search.

THE COURT: Overruled. Exception allowed.

Q. (By Mr. McEvers) Now did you get that on the 20th of March, 1923, when you were there with the officers?

A. Yes, sir.

Q. Did you make an examination of it when you first got it to see what it contained?

A. Pulled the cork.

Q. Smell of it?

A. Yes, sir.

Q. What was in it when you took it out of the barrel?

A. The same as it is now, I guess.

Q. What was in it then, do you know?

A. Whiskey, I suppose; I didn't taste it; I smelled of it.

Q. Did you then know moonshine whiskey when you smelled it?

A. Yes, sir.

Q. What was in that bottle?

A. Moonshine.

Q. Handing you Government's Exhibit 2, which we have here as four glasses, I will ask you whether or not you saw those before?

MR. HIBBARD: May my same objection and exception go to this testimony?

THE COURT: Yes.

Thereupon witness testified that he found

glasses March 20th on the kitchen cabinet and that they were the similar to the glasses he drank from on the occasion of his first visit. That the witness is familiar with the glasses, that were during the days of licensed saloons, used as whiskey glasses, and that the glasses referred to as "Government's Exhibit No. 2," are the same as the old-fashioned whiskey glasses. This bottle was turned over to the officers, Reynolds and Kuchenbecker. That both of the defendants were there March 20th, 1923. That the Casa Espanola is a Spanish rooming and boarding house. Did not know who was running the place.

CROSS EXAMINATION.

Did not know defendant Matias Idoata prior to March 17th, 1923. Earl Padgett was not present at the time search was made. No other conversation with women in kitchen at time drinks were purchased other than asking for a drink. When asked for drinks the defendant, Maria Urrutia, went to the flour bin, took out the bottles and poured the drinks out. Gave Padgett a dollar and when first two drinks were purchased she went into the dining room to get it changed and brought it back and Pedgett slipped it to me and I bought the other two drinks, twenty-five cents a drink. Gave an unmarked silver dollar. Did not have any trouble in recognizing the parties when search warrant was served. Did not see the defendant's wife at time

of search, she was in bed sick. The woman defendant tried to take it away from me when I got my hands on it. Witness left Burley after the raid. Employed in past on the police force in Twin Falls and served as a deputy sheriff at Twin Falls.

O. E. KUCKENBECKER, was produced as a witness on behalf of plaintiff, being first duly sworn testified as follows:

That he lives in Boise, Idaho, is a federal prohibition agent and has been for past year. Was in Burley, Idaho, March 20th, 1923, and in company with Reynolds and Redman made a search of the Casa Espanola. Had a search warrant.

By MR. McEVERS:

Q. Did you, in company with Reynolds and Redman, make a search of the Casa Espanola?

A. Yes, sir.

Q. Where is that located, do you know?

A. I don't know the street. It is about two blocks and a half from the depot, I believe, track.

Q. What was the occasion of your making the visit that day?

A. We had a search warrant for the place.

Q. And did you search it?

A. Yes, sir.

Q. Who was there when you arrived?

A. Mr. Reynolds and I and Mr. Redman went through the front door, and as we went through the main part—I think it is used as a dining room,

Mr. Redman says, "There is the proprietor"—

MR. HIBBARD: Just a minute. Your Honor, I object to this line of testimony, on the same grounds that I did before, for the matter of the record, so that I may have my record clear as to each witness.

THE COURT: You mean because of your claim of the illegality of the search warrant?

MR. HIBBARD: Yes, an evidence that was obtained in the house on March 20th, 1923, at the time the search was made.

THE COURT: I understand your objection. It may be understood as going to the evidence.

MR. HIBBARD: To the evidence of all the witnesses.

THE COURT: Yes.

MR. HIBBARD: Please note an exception.

THE COURT: Yes, you may have an exception.

Thereupon the witness testified that Mr. Reynolds had the search warrant and that before they went in Mr. Redman told them in the presence of the defendant that Matias Idoata was the proprietor. Redman and witness went directly back into the kitchen where the defendant Maria Urrutia was standing alongside of the cupboard. Mr. Redman opened the flour bin and raised out the bottle and the lady grabbed hold of it. Mr. Redman jerked it out of her hand. Glasses were along side of or on top of flour bin. Bottle same as Plaintiff's Exhibit I. Put initials on it at that time. Smelled of

contents at that time and that it contained an intoxicating beverage known as moonshine whiskey. Tagged and sealed Exhibit I, at that time. Glasses were over the bin submerged in water. Lady defendant said "No, No." when Redman took bottle out of bin. Defendant Matias Idoata said he was the proprietor of the place at that time and that the lady had nothing to do with it, either the place or whiskey. The place was a Spanish restaurant and rooming house.

CROSS EXAMINATION.

Did not remember the time of day when search was made. Searched six or seven other places that day. Several people in large dining room when search was made. Saw woman come out of the bedroom.

PAUL REYNOLDS was produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Now is and has been a federal prohibition agent for over two years. Made a search of the Casa Espanola in Burley, Idaho, on the 20th of March, 1923. The two defendants were there when he first arrived. The defendant Matias Idoata was in the dining room and witness asked him if he was the proprietor and defendant stated that he was. Told defendant that he had a search warrant for the place and after reading the warrant defendant told him to "Go ahead." When he got to kitchen

door Agent Kuchenbecker had a bottle and some glasses in his hand. Examined contents and bottle contained whiskey. Put initials on bottle and put glasses in an envelope and brought then to Boise, where they have been in a vault. That Burley was in the County of Cassia, State of Idaho.

CROSS EXAMINATION.

Described the contents of the kitchen and dining room. Saw no other women in place. Does not know Mr. Padgett.

C. B. STEUNENBERG, testified on behalf of plaintiff as follows:

Now is and has been a federal prohibition agent for three years last past located in Boise, Idaho; competent to determine alcoholic content with guagers outfit and guager's manual furnished by the Government. His test may vary up to one and a half per cent on forty or fifty per cent. Broke seal and tested Plaintiff's Exhibit I. It tested 40½ per cent alcohol by volume. Was moonshine and ordinarily used as a beverage. No cross-examination.

MR. McEVERS: We wish to offer in evidence at this time, if the Court please, Government's Exhibit 1 and Government's Exhibit 2, consisting of four whiskey glasses.

MR. HIBBARD: Your Honor, the defendants object to the introduction as evidence of Plaintiff's Exhibits I and 2, on the ground that they are in-

competent, irrelevant, and immaterial, obtained illegally, under an illegal search warrant, and should not be used as evidence in this case.

THE COURT: Overruled.

MR. HIBBARD: Also, that it would be prejudicial to the defendants, if so used.

THE COURT: Overruled. Exception allowed.

MR. McEVERS: The government rests.

MARIA URRUTIA, took the stand in her own defense and after being first duly sworn testified as follows: (The Clerk administered the oath to Mr. Hugo, the interpreter to correctly translate Spanish into English.)

Witness a married woman 54 years of age. Has one child 21 years of age. Husband a sheep herder. Did not see Mr. Redman anytime before search. Never sold any liquor at anytime. Working at the Casa Espanola for her board and room. Mrs. Idoata was sick with the flue at the time of the raid. Does not have an interest in the Casa Espanola and derives no profits therefrom.

CROSS EXAMINATION.

Has been working at the Casa Espanola for two months. Did the cooking while the wife of the defendant Matias was sick. No flour in bin where bottle was. Saw glasses in bowl with water when she first went to work in February. Has not seen anybody use glasses. Never washed these glasses.

Never asked why they were there. Knew that bottle was in bin for some time previous to the search. Grabbed the bottle for the reason that she did not know who parties were. She was told that bottle contained medicine. Never has seen anybody get a drink of liquor in the house nor has she seen Matias Idoata sell liquor to anyone.

MATIAS IDOATA, took the stand in his own behalf and after being first duly sworn testified as follows: (By use of interpreter). Lived at Burley for five years. Has family of wife and two children. Owns Casa Espanola and is a kind of a field boss for the Amalgamated Sugar Company at Burley. Has known the defendant Maria Urrutia for several years and she has stayed at his house working for her board and room for about two months. Does not know Mr. Redman and never saw him prior to March 20th, 1923. Does not know Mr. Padgett. Owns glasses and has had them in his possession for four or five years. Put glasses and bottle in cabinet. Wife got the flu about 13th of March. Bought liquor from a Mexican and gave to wife with raw eggs and milk. Had no liquor in his possession prior to the time his wife got the flu. Does not divide the profits with the defendant Maria Urrutia. Did not sell any liquor out of Plaintiff's Exhibit 1, or any other bottle, at any time. There are twelve rooms in the Casa Espanola. Number of boarders vary to as big as sixty.

A man and his son were with him at the time Mr. Reynolds served the search warrant. There are usually other men and women in and around his place. Wife in bed at the time of the search in a room leading from the kitchen. Has not received money from the other defendant obtained by the sale of liquor of any kind.

CROSS EXAMINATION.

(By MR. McEVERS):

Wife began to feel symptoms of the flu on 13th and went to bed on 16th or 17th of March. She would get up for two or three hours at a time and then go back to bed, may have been up on the 17th. Bought bottle on the 13th of March, from a Mexican boy whose name he does not know. Had seen him three or four times before. This was the only bottle witness purchased. Started to give wife liquor out of this bottle on 14th mixed with milk and eggs. Gave it to her whenever she felt sick, once a day or once every two days, or twice a day, from the 14th to the 20th. Gave from a tablespoon to a whiskey glass full at a time. Used glasses to give the kids medicine, used one at a time. Does not know who put glasses in the bowl of water. Never sold liquor or authorized anyone to sell liquor at his place. Did not see Redman until the 20th. Occupation is boss of sugar crew and acted as field boss on several occasions. Runs Casa Espanola and takes people to the factory and fields

in a car. Has run house for about five years. Wife and employed help do the cooking. In the winter he boards people who work with the sheep. He has not been in the employ of the Sugar Company at all.

HARRY WINTER, produced as a witness on behalf of defendants, being first duly sworn, testified as follows:

Has lived in Burley for about fourteen years. Operates the light and power company, a local oil and gas company and owns some farms. Known the defendant Matias Idoata about four years. Has seen the defendant hauling Mexicans from one ranch to another and placing them and telling them what to do. Knows the general reputation of the defendant Matias Idoata for truth and veracity to be first class.

CROSS EXAMINATION.

If he knew a man to be in the bootlegging business he would not consider his reputation for truth and veracity to be good. Has no recollection of telling Mr. McEvers that he knew to a moral certainty that the defendant was engaged in the bootlegging business at the Casa Espanola. Talked with Mr. McEvers in said party's office about the case. If he made the remark he did not mean to convey the impression that the defendant was dealing in liquor. One of the defendant's bondsmen.

O. V. OSLER, produced on behalf of the defendants, being first duly sworn, testified as follows:

Lives in Boise at the present time, but formerly lived in Burley for a period of about eight years, until coming here, about two months ago. Drug clerk while in Burley. Known the defendant Matias Idoata for the last three or four years. Knows the general reputation of the defendant Matias for truth and veracity to be good. Defendant's credit was unlimited.

CROSS EXAMINATION.

Based his answer as to the reputation of the defendant on the fact that defendant always paid his bills.

By MR. HIBBARD: The defense rests.

By MR. McEVERS: The government rests.

After the Court instructed the jury, the jury thereupon retired to consider their verdict and returned into the Court a verdict finding the defendant Maria Urrutia not guilty on each of the four counts contained in the information and the defendant Matias Idoata guilty on each of the two remaining counts contained in the information.

And now in furtherance of justice and that right may be done, the defendant, Matias Idoata, through his counsel, tenders and presents the foregoing as his bill of exceptions in this case, to the action of the Court, and prays that the same may be settled

and allowed and signed and sealed by the Court.

ROBT. HIBBARD,

Attorney for Defendant.

Service of the foregoing Bill of Exceptions admitted and acknowledged by receipt of a copy thereof this 11th day of May, 1923.

JOHN H. McEVERS,

Asst. U. S. Attorney.

The foregoing is duly settled and allowed as the defendant's Bill of Exceptions No. 2, this 12th day of May, 1923.

FRANK S. DIETRICH,

Judge of District Court.

Endorsed, Filed May 12, 1923,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

No. 971.

PETITION FOR WRIT OF ERROR.

Comes now Matias Idoata, the defendant herein, and complains and says that on or about the 25th day of April, 1923, this Court entered judgment and sentence herein in favor of the plaintiff and against the defendant, in which judgment and proceedings had prior thereunto in this cause certain errors were committed, to the prejudice of this defendant, all of which and more in detail appear from the assignment of error which is filed with this petition.

WHEREFORE, this defendant prays that a writ of error may issue in his behalf out of this Court or out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of and that a transcript of the record, proceedings and papers in this cause duly authenticated, may be sent to the Clerk of the Circuit Court of Appeals of the Ninth Circuit.

ROBT. HIBBARD,

Attorney for Defendant.

Residence, Boise, Idaho.

Endorsed, Filed May 12, 1923,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

No. 971.

ASSIGNMENT OF ERROR.

Now comes the defendant, Matias Idoata, in the above entitled action and in connection with his petition for a writ of error, makes the following assignment of errors, which he avers occurred in connection with and upon the trial of the above entitled cause, to-wit:

I.

That the United States District Court for the Southern Division, District of Idaho, erred in overruling the defendant's petition on file herein, petitioning for an order of the Court restraining the use as evidence of certain property seized under

that certain illegal search warrant issued by United States Commissioner John Jackson to Elias Martsers, Prohibition Director for Idaho., upon the affidavit of Paul E. Reynolds. That said search warrant was faulty for the following reasons:

A. That the affidavit upon which the search warrant was based was insufficient in that it did not set out facts upon which the affiant based his belief and information as required by law. It merely stated, "that the said Paul E. Reynolds has been informed by a reliable party, whose name affiant does not care to disclose, that the said party has seen intoxicating liquors possessed and sold by the said Mexican at the Casa Espanola on the premises described above."

B. That the affidavit for said search warrant did not describe the property to be seized as required by law inasmuch as it merely stated "there is located certain property, to-wit: whiskey, beer and other intoxicating liquors, etc".

2.

That the Court erred in the admission of evidence offered by plaintiff in the following instances, to-wit:

A. In admitting the evidence of R. F. Redman when he testified that he, in company with Mr. Reynolds and Mr. Kuchenbecker, on March 20th, 1923, made a search by authority of the above entitled search warrant, of the defendant's dwelling

known as the Casa Espanola, and located in Burley, Cassia County, Idaho. Also, in allowing this witness to testify that he saw the defendants there at that time and that they found and seized a bottle of whiskey and four whiskey glasses and took them from said place notwithstanding the protests of the defendants and in allowing the witness to testify that Plaintiff's Exhibits 1 and 2, were found on that day and at that time.

B. In admitting the evidence of O. E. Kuchenbecker to the effect that under the authority of a search warrant, he participated in a search of the defendant's premises on March 20th, 1923, and at said time found a bottle containing moonshine whiskey and four whiskey glasses which he identified as Plaintiff's Exhibits No. 1 and 2.

C. In admitting the evidence of Paul Reynolds, Federal Prohibition Agent, to the effect that he conducted a search of the Casa Espanola in Burley, Idaho, on March 20th, 1923, and at that time and at said place Plaintiff's Exhibits No. 1 and 2, were found and seized.

D. In admitting the evidence of C. B. Steunenberg to the effect that Plaintiff's Exhibit No. 1, contained 40½ per cent alcohol by volume.

E. In admitting Plaintiff's Exhibits No. 1 and 2, as evidence in the above entitled cause.

3.

That the Court erred in rendering and entering

judgment against the defendant on each one of the two counts contained in the information for the following reasons:

A. The legal evidence was insufficient to sustain the judgment rendered and entered on each count.

WHEREFORE, defendant prays that the judgment of the District Court may be reversed.

ROBT. HIBBARD,

Attorney for Defendant.
Residence, Boise, Idaho.

Service acknowledged this 1st day of May, 1923.

E. G. DAVIS,

U. S. Attorney.

J. H. McEVERS,

Asst. U. S. Attorney.

McKEEN F. MORROW,

Asst. U. S. Attorney.

Endorsed, Filed May 12, 1923,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

No. 971.

ORDER GRANTING WRIT OF ERROR.

On motion of Robert Hibbard, counsel for the Matias Idoata, the above named defendant it is hereby ordered that a writ of error to the Circuit Court of Appeals of the United States, for the Ninth Circuit, from the judgment heretofore rendered and entered herein, be, and the same is here-

by granted and allowed, and that a certified transcript of the record and all proceedings be forthwith transmitted to the Clerk of said Circuit Court of Appeals of the United States, for the Ninth Circuit.

It is further ordered that the said defendant be, and is hereby admitted to bail in the sum of Five Hundred (\$500.00) Dollars, pending the termination of said proceedings in error, conditioned according to law, the same to act as a supersedeas or stay bond.

Dated at Boise, Idaho, this 12th day of May, 1923.

FRANK S. DIETRICH,

Judge.

Endorsed, Filed May 12, 1923,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

No. 971.

PRAECIPE AND STIPULATION.

TO THE CLERK OF THE ABOVE ENTITLED COURT:

You are hereby requested to transmit in printed form to the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, those portions of the record in said cause which are specified in the annexed stipulation.

ROBT. HIBBARD,

Attorney for Defendant.

IT IS HEREBY STIPULATED, by and between the respective parties to the above entitled cause through their attorneys of record, that the following portions only of the record in said cause shall be certified by the Clerk of the above entitled Court to the United States Circuit Court of Appeals for the Ninth Judicial Circuit in response to the writ of error herein, to-wit:

1. Information.
2. Minute entry of Clerk showing plea of defendants.
3. Verdict of jury.
4. Judgment.
5. Bills of Exceptions Nos. 1 and 2.
6. This stipulation.
7. Petition for Writ of Error.
8. Assignment of Errors.
9. Writ of Error.
10. Citation.
11. Certificate of Clerk.
12. Order Granting Writ of Error.

Signed,

E. G. DAVIS,

*United States District Attorney,
District of Idaho.*

JOHN H. McEVERS,

*Assistant United States District
Attorney, District of Idaho.*

ROBT. HIBBARD,

*Attorney for Defendant.
Residence, Boise, Idaho.*

Endorsed, Filed May 15, 1923,
W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

WRIT OF ERROR.

UNITED STATES OF AMERICA,)
Ninth Judicial District,) ss.

The President of the United States to the Honorable Judge of the District Court of the United States for the District of Idaho, Southern Division,—GREETING:

Because of the record and proceedings, as also in the rendition of the judgment, of a plea which in the said District Court, before you, between the United States of America and Matias Idoata, defendant, a manifest error hath happened, to the great damage of the said Matias Idoata, defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, California, in said Circuit, on the 14th day of June, 1923, A. D., in said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Cir-

cuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable William H. Taft, Chief Justice of the United States, this 12th day of May, 1923, and in the 146th year of the Independence of the United States of America.

Allowed by Frank S. Dietrich, United States District Judge.

Attest:

W. D. McREYNOLDS,

(Seal)

*Clerk of the District Court of the
United States, District of Idaho,
Southern Division.*

Endorsed, Filed May 12, 1923,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

No. 971.

CITATION.

United States of America,)
Southern Division,) ss.
District of Idaho,)

To the United States of America, the above-named Plaintiff, and E. G. Davis, Esq., United States District Attorney for the District of Idaho,—
GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a session of the United

States Circuit Court of Appeals for the Ninth Judicial Circuit, to be held in the City of San Francisco, California, in said Circuit, on the 14th day of June, 1923, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Idaho, Southern Division, wherein Matias Idoata is plaintiff in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS, the Honorable F. S. Dietrich, District Judge of the United States for the District of Idaho, Southern Division, at Boise, Idaho, within said District, this 15th day of May, 1923, A. D., and the 146th year of the Independence of the United States of America.

(Signed)

F. S. DIETRICH,

United States District Judge.

Attest: W. D. McREYNOLDS,

(Seal)

Clerk.

Endorsed, Filed May 15, 1923,

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

No. 971.

CLERK'S CERTIFICATE.

I, W. D. McReynolds, Clerk of the District Court

of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 44, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein upon Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by the praecipe filed herein.

I further certify that the cost of the record herein amounts to the sum of \$53.25, and that the same has been paid by the Plaintiff in Error.

Witness my hand and the seal of said Court this 28th day of May, 1923.

(SEAL)

W. D. McREYNOLDS,
Clerk.

By Pearl E. Zanger,
Deputy.